

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF CALIFORNIA

OFFICE OF THE CLERK
2500 Tulare Street
Fresno, CA 93721

Clerk, Northern District of California
450 Golden Gate Ave
San Francisco, CA 94102

FILED
FEB 27 2008
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RE: JAMES E. SMITH vs. HEDGPETH
USDC No.: 1:08-CV-00134-LJO-WMW

Dear Clerk,

Pursuant to the order transferring the above captioned case to your court, dated February 05, 2008, transmitted herewith are the following documents.

Electronic Documents: 1 to 2.

Documents maintained electronically by the district court are accessible through PACER for the Eastern District of California at <https://ecf.caed.uscourts.gov>.

Please acknowledge receipt on the extra copy of this letter and return to the Clerk's Office.

Very truly yours,

February 5, 2008

/s/ M. Verduzco

Deputy Clerk

RECEIVED BY:

Please Print Name

DATE RECEIVED:

NEW CASE
NUMBER:

CV 08

1157

SI

(PR)

I hereby attest and certify on 2/5/08
that the foregoing document is a full, true
and correct copy of the original on file in my
office and in my legal custody.

VICTORIA C. MINOR
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

By [Signature] Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES E. SMITH,

1:08-cv-00134 LJO-WMW

Petitioner,

vs.

ORDER OF TRANSFER

HEDGPETH,

Respondent.

_____/

Petitioner, a state prisoner proceeding pro se, has filed a habeas corpus action pursuant to 28 U.S.C. § 2254, together with a request to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

The federal venue statute requires that a civil action, other than one based on diversity jurisdiction, be brought only in “(1) a judicial district where any defendant resides, if all defendants reside in the same state, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of the property that is the subject of the action is situated, or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought.” 28 U.S.C. § 1391(b).

In this case, the petitioner is challenging a conviction from San Francisco County, which is in the Northern District of California. Therefore, the petition should have been filed in the United States District Court for the Northern District of California. In the interest of justice, a federal court may transfer a case filed in the wrong district to the correct district. See 28 U.S.C. § 1406(a); Starnes v.

1 McGuire, 512 F.2d 918, 932 (D.C. Cir. 1974).

2 Accordingly, IT IS HEREBY ORDERED that this matter is transferred to the United States
3 District Court for the Northern District of California.

4 IT IS SO ORDERED.

5 **Dated: February 4, 2008**

/s/ William M. Wunderlich
UNITED STATES MAGISTRATE JUDGE

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FILED

JAN 28 2008

AO 241 (Rev. 5/85)

PETITION UNDER 28 USC § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODYCLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
C. ESTEVES
DEPUTY CLERK

United States District Court		District EASTERN DISTRICT
Name JAMES E. SMITH	Prisoner No. J74120	Case No.

Place of Confinement **KERN VALLEY STATE PRISON**
P.O. BOX 5102 B4-227up
Delano, CA 93216**CV 08****1157 SI**

Name of Petitioner (include name under which convicted)

Name of Respondent (authorized person having custody of petitioner)

JAMES E. SMITH**v. HEDGPETH, Prison Manager & CDCR**The Attorney General of the State of: **California****1:08-CV-0134-LSD-WMMW-HC****PETITION**

- Name and location of court which entered the judgment of conviction under attack San Francisco,
Municipal or Superior Court
- Date of judgment of conviction Unknown
- Length of sentence 3 years (1995)
- Nature of offense involved (all counts) Fraudulently concealment 28 U.S.C. § 1292(b)
Unknown Rule 4(a)(4) FRAP; Rule 60(b) F.R.Civ.P.; Rule 38 FRAP,
Rule 81(a)(2) F.R.Civ.P; Rule 52(b), 28 U.S.C. § 2107; 28 U.S.C. §
2253; 28 U.S.C. § 2243 Ninth Circuit Rule 13, Rule 28 FRAP; Rule 59
- What was your plea? (Check one)
 - Not guilty ☐
 - Guilty ☒
 - Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

A jury trial under fraudulently conducted, wrongful arrest and
imprisonment causing a deprivation of his constitutional rights
under the Fourteenth Amendment.
- If you pleaded not guilty, what kind of trial did you have? (Check one)
 - Jury ☐
 - Judge only ☒
- Did you testify at the trial?
Yes ☐ No ☒
- Did you appeal from the judgment of conviction?
Yes ☒ No ☐

08-1157-SI

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9. If you did appeal, answer the following:

- (a) Name of court Superior Court of San Francisco, Municipal Court
- (b) Result of San Francisco, Denied!!
- (c) Date of result and citation, if known 1/11/08
- (d) Grounds raised Fraudulently concealment; violation of the Fourteenth Amendment rights.

(e) If you sought further review of the decision on appeal by a higher state court, please answer the following:

- (1) Name of court State Supreme Court
- (2) Result Denied
- (3) Date of result and citation, if known _____
- (4) Grounds raised The same Vilation of the Fourteenth~~th~~ amendment.

(f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

- (1) Name of court _____
- (2) Result _____
- (3) Date of result and citation, if known _____
- (4) Grounds raised _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes ☒ No ☐

11. If your answer to 10 was "yes," give the following information:

- (a) (1) Name of court U.S. District Court; Ninth Circuit Court of Appeals
- (2) Nature of proceeding Mandate
- (3) Grounds raised Violation of the Fourteenth Amendment rights.

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(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒(5) Result Denied or granted(6) Date of result Unknown

(b) As to any second petition, application or motion give the same information:

(1) Name of court _____

(2) Name of proceeding _____

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

(5) Result _____

(6) Date of result _____

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☐ No ☐(2) Second petition, etc. Yes ☐ No ☐(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

My attorney failed to present the Supreme Courts opinion to
me and the 90 days had expired before I got the order from her.

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting same.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

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For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, you should raise in this petition all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: 28 U.S.C. § 2107; Rule 11 Rules governing Habeas Corpus;

The transcripts were fraudulently prepared by the Court Reporter,
The prosecuting Attorney and the State Judge in viol. 14th Amend.
 Supporting FACTS (state briefly without citing cases or law): 28 USC 1292(a)(1); 4(a)1

Rule 10 FRAP; Browder v. Dept. of Corrections of Illinois

434 U.S. 257; See 534 F.2d 331, res judicata effect, petitioner
motion for relief from judgment under rule providing for
rule 60(b) F.R.Civ.P. The Court of Appeals lacked jurisdiction
to review the original order granting relief, since respondent's
untimely post-judgment motion under Rule 60(b), even if the

B. Ground two: order were construed as a denial of relief from judgment
under Rule 60(b), as to which the appeal would have been

Supporting FACTS (state briefly without citing cases or law): timely, petitioner argued
that the court of appeals would have jurisdiction to review
(only that order for abuse of discretion. under Rule 4(a);
28 U.S.C. § 2107, a notice of appeal must be filed within
30 days of entry of the judgment or order from which the
appeal is taken. This 30 days limit is mandatory and jurisdic-
tional U.S. v. Robinson 361 U.S. 220, 80 S. Ct. 282 Rule

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C. Ground three: Violation of the Fourteenth Amendment and the Sixth Amendment rights under fraudulent concealment Rule 52(b), 81(a)(2)

Supporting FACTS (state *briefly* without citing cases or law): 28 U.S.C. § 2253, respondent notice of appeal was not filed within the 30 days of the order and the time for appeal had not been tolled, by respondent's untimely post judgment motion, 429 U.S. 1072;; See Fallen v. U.S. 378 U.S. 139, the purpose of the rule is clear it is to set a definit point of time when litigations should

D. Ground four: be at an end, unless within that time the prescribed application has been made, any other construction of the

Supporting FACTS (state *briefly* without citing cases or law): statute would defeat its purpose supra 319 U.S. at 415. An appeal in a habeas corpus proceeding lies from a "final order" 28 U.S.C. § 2253, as the District Court 'granted' the writ and directed that petitioner be discharged if the state did not retry me within 60 days. 28 U.S.C. § 2243, by granting the state court's record see 312 U.S. 275, respondent notice of appeal was untimely by 68 days.

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state *briefly* what grounds were not so presented, and give your reasons for not presenting them: this court has jurisdiction Rule 54(b) F.R.Civ.P.; Rule 28 FRAP Ninth Cir.

Rule 13; see Balesteria Police Department, petitioner was

fasely arrested, the police derparment county attorney and

the County illegal condition of confienment under investigation.

14. Do you have any pethion or appeal now pending in any court, either state or federal, as to the judgment under attack?

Yes ☒ No ☐

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing Joseph Manzella, Denise Kendall

(b) At arraignment and plea _____

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- (c) At trial unknown
- (d) At sentencing unknown
- (e) On appeal Denise Kendall
- (f) In any post-conviction proceeding none
- (g) On appeal from any adverse ruling in a post-conviction proceeding none

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes ☒ No ☐ Sentenced more than once on the same charges!

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) Give date and length of the above sentence: 3 years, however the department of corrections have refixed the sentence at least twice at Max!

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☒ No ☐

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

in Leo Peppi

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

1/23/08
Date

James E. Smith
Signature of Petitioner

CLOSED, HABEAS

**U.S. District Court
Eastern District of California - Live System (Fresno)
CIVIL DOCKET FOR CASE #: 1:08-cv-00134-LJO-WMW
Internal Use Only**

(HC) Smith v. Hedgpeth
Assigned to: District Judge Lawrence J. O'Neill
Referred to: Magistrate Judge William M. Wunderlich
Cause: 28:2254 Petition for Writ of Habeas Corpus (State)

Date Filed: 01/28/2008
Date Terminated: 02/05/2008
Jury Demand: None
Nature of Suit: 530 Habeas Corpus
(General)
Jurisdiction: Federal Question

Petitioner

James E. Smith

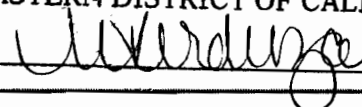
represented by **James E. Smith**

J-74120
Kern Valley State Prison
P.O. Box 5102
Delano, CA 93216
PRO SE

V.

Respondent

Hedgpeth
Prison Manager

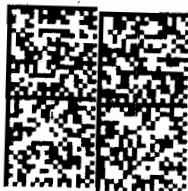
I hereby attest and certify on 2/5/08
that the foregoing document is a full, true
and correct copy of the original on file in my
office and in my legal custody.
VICTORIA C. MINOR
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
By  Deputy

Date Filed	#	Docket Text
01/28/2008	<u>1</u>	PETITION for WRIT of HABEAS CORPUS by James E. Smith.(Flores, E) (Entered: 01/30/2008)
01/31/2008		(Court only) ***STAFF NOTE: Case screened, order to transfer case to the Northern District submitted to WMW/lvn. (Flores, E) (Entered: 01/31/2008)
02/05/2008	<u>2</u>	ORDER, CASE TRANSFERRED to District of CA, Northern District. Original file, Certified Copy of Transfer Order, and Docket Sheet sent. signed by Magistrate Judge William M. Wunderlich on 2/4/08. CASE CLOSED. (Verduzco, M) (Entered: 02/05/2008)
02/05/2008		SERVICE BY MAIL: 2 Transfer Order served on James E. Smith. (Verduzco, M) (Entered: 02/05/2008)
02/05/2008	<u>3</u>	TRANSMITTAL of DOCUMENTS on *2/5/2008* to * Clerk, Northern District of California* *450 Golden Gate Ave* *San Francisco, CA 94102*. **

		*Electronic Documents: 1 to 2. *. (Verduzco, M) (Entered: 02/05/2008)
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UNITED STATES COURTS
OFFICE OF THE CLERK, UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO, CALIFORNIA 93721-1318
OFFICIAL BUSINESS

[Handwritten signature]



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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TRANSFER IN